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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yuba)

THE PEOPLE,

Plaintiff and Respondent,

v.

THOMAS ROSS HICKMAN,

Defendant and Appellant.

C088849

(Super. Ct. Nos.
CRF17000204701,
CRF180000274)

Appointed counsel for defendant Thomas Ross Hickman filed an opening brief setting forth the facts of the case and asking this court to review the record to determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436 (*Wende*).) After reviewing the entire record, we affirm the judgment.

We provide the following brief description of the facts and procedural history of the case. (See *People v. Kelly* (2006) 40 Cal.4th 106, 110, 124.)

FACTUAL AND PROCEDURAL BACKGROUND

A. Possession of a Firearm Case

A loaded firearm was found in defendant's bedroom. Defendant pleaded guilty to one count of possession of a firearm by a felon. (Pen. Code, § 29800, subd. (a)(1).)¹ In exchange for defendant's guilty plea, he was to be released pending sentencing on the condition that he enter and successfully complete a residential treatment program of at least six months in duration. Pursuant to the plea agreement, upon successful completion of the program defendant would earn an unusual case finding and the People would stipulate to a probationary sentence. Defendant stipulated to an upper term of three years in state prison if he failed to complete the residential treatment program, and he waived all time credits for any time spent in the treatment program on failure to complete the program. Defendant was released to the residential treatment program, but he was discharged after four months for using a controlled substance while in the program.

The trial court sentenced defendant to the upper term of three years in state prison for the violation of section 29800, subdivision (a)(1), in accordance with the plea agreement. The court imposed various fines and fees, including a restitution fine in the amount of \$300, a \$40 court operations assessment fee, and a \$30 conviction assessment fee. The court awarded defendant presentence credit for 139 actual days and 138 conduct days.

B. Resisting an Officer Case

While an inmate in the Yuba County Jail, defendant had a physical altercation with a correctional officer and refused to comply with orders. Defendant pleaded no contest to one count of resisting an executive officer. (§ 69.) In exchange for defendant's guilty plea, he was permitted, as in the possession of a firearm case, to participate in a residential treatment program. Pursuant to the agreement, upon

¹ Undesignated statutory references are to the Penal Code.

successful completion of the program, defendant's section 69 violation would be reduced to a misdemeanor. The agreement further provided that if defendant did not complete the residential treatment program, the section 69 violation would remain a felony and he would be sentenced to a term of imprisonment consecutive to the sentence imposed in the possession of a firearm case. Defendant waived all custody credits while in the treatment program. Defendant was discharged from the program for using a controlled substance.

The trial court sentenced defendant to one-third of the middle term of eight months in state prison for the violation of section 69, to be served consecutively to his sentence in the possession of a firearm case, in accordance with the plea agreement. The court imposed various fines and fees, including a restitution fine in the amount of \$300, a \$40 court operations assessment fee, and a \$30 conviction assessment fee. The court ordered zero days of actual or conduct credits.

Defendant appeals. He did not obtain a certificate of probable cause.

DISCUSSION

We appointed counsel to represent defendant on appeal. Counsel filed an opening brief that sets forth the facts and procedural history of the case and requests this court to review the record and determine whether there are any arguable issues on appeal. (*Wende, supra*, 25 Cal.3d 436.) Defendant was advised by counsel of his right to file a supplemental brief within 30 days from the date the opening brief was filed. More than 30 days have elapsed, and defendant has not filed a supplemental brief. Having undertaken an examination of the entire record pursuant to *Wende*, we find no arguable error that would result in a disposition more favorable to defendant. Accordingly, we affirm the judgment.

DISPOSITION

The judgment is affirmed.

/s/
BLEASE, Acting P. J.

We concur:

/s/
DUARTE, J.

/s/
RENNER, J.